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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,379	01/20/2006	Patrick Delponte	062845-5050US	4991

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EXAMINER
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SEVILLA, CHRISTIAN ANTHONY

ART UNIT	PAPER NUMBER
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3775

MAIL DATE	DELIVERY MODE
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11/25/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,379	<b>Applicant(s)</b> DELPONTE ET AL.	
	<b>Examiner</b> CHRISTIAN SEVILLA	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/09/2005</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

Applicants' Preliminary Amendment filed 5/9/2005 is acknowledged. Claims 1-7 are canceled. New claims 8-14 are entered. Claims 8-14 are currently pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the stop elements" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the screw" in line 13. There is insufficient antecedent basis for this limitation in the claim.

In lines 13-15, it is unclear what is meant by "the link forms a tubular part in which one part of the screw can be tightly inserted along with at least two cords" Does this mean: 1. one part of the screw can be tightly inserted "along with" at least two cords, or 2. the link forms a tubular part "along with" at least two cords?

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Trieu et al. (US 2002/0120270), hereinafter "Trieu."

Regarding claim 8, Trieu discloses the claimed invention including a link (an implant) and stop elements (anchors) {paragraph [0006], lines 1-11}. One of the stop elements is a bone screw {paragraph [0006], line 11-12}. The link forms a tubular part (a braid) {paragraph [0035], lines 1-5} and at least two cords (pigtails) {paragraph [0041], lines 1-3}. Other stop elements comprise at least two stop buttons (184a, 184b) {paragraph [0072], lines 8-10}.

Regarding claim 9, Trieu discloses the screw and/or the link and/or the stop buttons are made of a bioresorbable material {paragraph [0036], lines 1-8; paragraph [0037], lines 6-13}.

Regarding claim 11, Trieu discloses the tubular part is realized by weaving threads in the form of a sock (a braid) {paragraph [0035], lines 1-5}.

Regarding claim 12, Trieu discloses the link includes four cords (pigtails at each end of the link or implant) {paragraph [0041], lines 1-4}.

Regarding claim 13, Trieu discloses each cord exhibits a rigidified free end (e.g. when the link or implant is constructed from polylactide or polyglycolide) {paragraph [0036], line 2}.

Regarding claim 14, Trieu discloses each stop button {184a, 184b; Fig. 20; paragraph [0072], lines 6-8} comprises one or two through-holes.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trieu in view of Meadows et al. (US 5156616), hereinafter "Meadows."

Trieu discloses the screw is an interference screw {paragraph [0037], lines 3-4}.

Trieu fails to specifically disclose the interference screw is deprived of a head and controlled via a prismatic cavity.

Attention however is directed to Meadows, which discloses a bone screw (11) with a hexagonal means for cooperating with a drive tool; and an external hex-drive (51) is inserted into the proximal end of the bone screw as it is driven {col. 4, lines 5-7 and lines 13-15}. Threads (19) of the bone screw are located on the body (15) of the bone screw.

It would have been obvious to a person having ordinary skill in the art at the time of the invention to have modified Trieu in view of Meadows to include an interference screw deprived of a head and controlled via a prismatic cavity. Doing so would have provided a screw that can be affixed below the surface of a bone, thereby reducing potential injury to surrounding tissue, and it would have provided a bone screw capable of being driven with a drive tool, thereby facilitating ease of installation.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN SEVILLA whose telephone number is (571)270-5621. The examiner can normally be reached on Monday through Thursday, 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS C. BARRETT can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTIAN SEVILLA/  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
Unit 3775